

IN THE UNITED STATES DISTRICT COURT **FILED**

FOR THE DISTRICT OF MONTANA

MAY 22 2012

BILLINGS DIVISION

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U.S. DISTRICT COURT
BILLINGS DIVISION

MELVIN J. ROBISON,)	
)	Cause No. CV-11-91-BLG-RFC-CSO
Plaintiff,)	
)	
v.)	ORDER ADOPTING FINDINGS
)	AND RECOMMENDATIONS OF
MICHAEL J. ASTRUE,)	U.S. MAGISTRATE JUDGE
Commissioner of Social Security,)	
)	
Defendant.)	
_____)	

United States Magistrate Judge Carolyn Ostby has entered Findings and Recommendation with respect to the parties' cross-motions for summary judgment seeking judicial review of the Commissioner's denial of Social Security disability insurance benefits. *Doc. 21*. Judge Ostby recommends that Robison's motion (*doc. 15*) be denied, the Commissioner's motion (*doc. 19*) be granted, and the denial of benefits be affirmed.

Upon service of a magistrate judge's findings and recommendation, a party has 14 days to file written objections. 28 U.S.C. § 636(b)(1). Robison has filed timely objections (*doc. 22*), to which the Commissioner has replied (*doc. 23*). Ordinarily, the Court must make a *de novo* determination of those portions of the

Findings and Recommendations to which objection is made. 28 U.S.C. § 636(b)(1). But Robison's objections, that Judge Ostby (1) failed to properly weigh the opinions of two treating psychiatrists, (2) failed to properly evaluate Mr. Robison's credibility, (3) affirmed the ALJ's reliance on flawed vocational expert testimony, and (4) erred in concluding that the ALJ's decision was supported by substantial evidence, are a rehashing of the same arguments rejected by Judge Ostby. *See doc. 21, pp.8-11*. Accordingly, this Court need not refute his arguments. *Shiplet v. Veneman*, 620 F.Supp.2d 1203, 1206, n.2 (D.Mont. 2009) *aff'd* 383 Fed.Appx. 667 (9th Cir. 2010); *see also Edwards v. Fischer*, 414 F.Supp.2d 342, 346-47 (S.D.N.Y. 2006) (where objections to F&R merely rehash same arguments made to magistrate judge, review is for clear error).

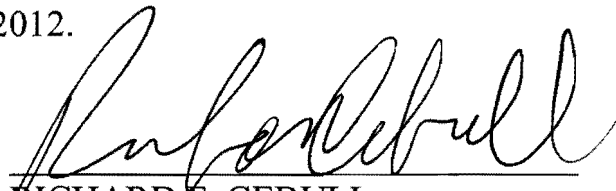
Judge Ostby correctly noted that this Court's review of the Commissioner's decision is very limited—the Commissioner's decision must be upheld unless it is (1) not supported by substantial evidence, which means more than a mere scintilla, but less than a preponderance, or (2) based on legal error. *Ryan v. Commr. of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008); 42 U.S.C. § 405(g). Just because there is evidence in the record that would support Robison's claim does not render the ALJ's decision erroneous. As shown by Judge Ostby, the Commissioner's decision is neither legally erroneous or unsupported by

substantial evidence. As such, the Findings and Recommendation of Magistrate Judge Ostby are well grounded in law and fact and are adopted in their entirety.

IT IS HEREBY ORDERED that Robison's Motion for Summary Judgment (*doc. 15*) is DENIED, and the Commissioner's Motion for Summary Judgment (*doc. 19*) is **GRANTED**.

The Clerk of Court shall notify the parties of the entry of this Order, enter judgment accordingly, and close this case .

DATED this 22nd day of May, 2012.



RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE